

Introduced by Senator Ducheny

February 16, 2005

An act to amend Section 1942.3 of the Civil Code, to amend Sections 568.2 and 568.3 of the Code of Civil Procedure, and to amend Section 50710.1 of the Health and Safety Code, relating to tenancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as introduced, Ducheny. Tenancy.

(1) In an unlawful detainer action to recover possession of a dwelling from a tenant, existing law provides that when certain conditions exist, there is a rebuttable presumption that a landlord has breached habitability requirements.

This bill would include in the conditions described above instances when the dwelling is deemed substandard, as specified, and when the dwelling violates specified limits relating to lead hazards.

(2) Existing law provides that a court may appoint a receiver to take possession of property under a variety of circumstances. Existing law requires that a receiver of real property containing rental housing notify the court of an order or notice to correct substandard conditions, as specified. Existing law also permits a tenant of real property that is subject to receivership, a tenant association, or specified government agencies to file a motions in a receivership action for instructions from a court in regard to substandard conditions, as specified.

This bill would include in the provisions regarding substandard conditions, described above, violations of limits relating to lead hazards.

(3) Existing law creates a housing program for migratory workers, and provides that if specified operating costs are inadequate, the Department of Housing and Community Development may approve

rents for certain migrant farm labor centers that are in excess of those at other migrant farm labor centers assisted by the Office of Migrant Services.

This bill would prohibit the department from increasing rents for residents of any Office of Migrant Services facility to a level that exceeds 30% of the average annualized household incomes of residents of the facility without specific legislative approval. The bill would also make a technical change.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1942.3 of the Civil Code is amended to
2 read:

3 1942.3. (a) In any unlawful detainer action by the landlord to
4 recover possession from a tenant, a rebuttable presumption
5 affecting the burden of producing evidence that the landlord has
6 breached the habitability requirements in Section 1941 is created
7 if all of the following conditions exist:

8 (1) The dwelling substantially lacks any of the affirmative
9 standard characteristics listed in Section 1941.1, *or is deemed*
10 *and declared substandard pursuant to Section 17920.3, or*
11 *violates Section 17920.10.*

12 (2) A public officer or employee who is responsible for the
13 enforcement of any housing law has notified the landlord, or an
14 agent of the landlord, in a written notice issued after inspection
15 of the premises which informs the landlord of his or her
16 obligations to abate the nuisance or repair the substandard
17 conditions, *or to correct the violation of Section 17920.3 or*
18 *17920.10 of the Health and Safety Code.*

19 (3) The conditions have existed and have not been abated 60
20 days beyond the date of issuance of the notice specified in
21 paragraph (2) and the delay is without good cause.

22 (4) The conditions were not caused by an act or omission of
23 the tenant or lessee in violation of Section 1929 or 1941.2.

24 (b) The presumption specified in subdivision (a) does not arise
25 unless all of the conditions set forth therein are proven, but
26 failure to so establish the presumption shall not otherwise affect

1 the right of the tenant to raise and pursue any defense based on
2 the landlord's breach of the implied warranty of habitability.

3 (c) The presumption provided in this section shall apply only
4 to rental agreements or leases entered into or renewed on or after
5 January 1, 1986.

6 SEC. 2. Section 568.2 of the Code of Civil Procedure is
7 amended to read:

8 568.2. (a) A receiver of real property containing rental
9 housing shall notify the court of the existence of any order or
10 notice to correct any substandard *or unsafe* condition, as defined
11 in Section 17920.3 *or 17920.10* of the Health and Safety Code,
12 with which the receiver cannot comply within the time provided
13 by the order or notice.

14 (b) The notice shall be filed within 30 days after the receiver's
15 appointment or, if the substandard condition occurs subsequently,
16 within 15 days of its occurrence.

17 (c) The notice shall inform the court of all of the following:

18 (1) The substandard conditions that exist.

19 (2) The threat or danger that the substandard conditions pose
20 to any occupant of the property or the public.

21 (3) The approximate cost and time involved in abating the
22 conditions. If more time is needed to approximate the cost, then
23 the notice shall provide the date on which the approximate cost
24 will be filed with the court and that date shall be within 10 days
25 of the filing.

26 (4) Whether the receivership estate is likely to contain
27 sufficient funds to abate the conditions.

28 (d) If the receivership estate does not contain sufficient funds
29 to abate the conditions, the receiver shall request further
30 instructions or orders from the court.

31 (e) The court, upon receipt of a notice pursuant to subdivision
32 (d), shall consider appropriate orders or instructions to enable the
33 receiver to correct the substandard conditions or to terminate or
34 limit the period of receivership.

35 SEC. 3. Section 568.3 of the Code of Civil Procedure is
36 amended to read:

37 568.3. Any tenant of real property that is subject to
38 receivership, a tenant association or organization, or any federal,
39 state, or local enforcement agency, may file a motion in a

1 receivership action for the purpose of seeking further instructions
2 or orders from the court, if either of the following is true:

3 (a) Substandard *or unsafe* conditions exist, as defined by
4 Section 17920.3 *or 17920.10* of the Health and Safety Code.

5 (b) A dispute or controversy exists concerning the powers or
6 duties of the receiver affecting a tenant or the public.

7 SEC. 4. Section 50710.1 of the Health and Safety Code is
8 amended to read:

9 50710.1. (a) If all the development costs of any migrant farm
10 labor center assisted pursuant to this chapter are provided by
11 federal, state, or local grants, and if inadequate funds are
12 available from any federal, state, or local service to write-down
13 operating costs, the department may approve rents for that center
14 that are in excess of rents charged in other centers assisted by the
15 Office of Migrant Services. However, ~~prior~~ *notwithstanding any*
16 *other provision of law, the department shall not increase rents*
17 *for residents of any Office of Migrant Services Facility to a level*
18 *that exceeds 30 percent of the average annualized household*
19 *incomes of residents of the facility without specific legislative*
20 *authorization. Prior to approving these rents, the department*
21 *shall consider the adequacy of evidence presented by the entity*
22 *operating the center that the rents reimburse actual, reasonable,*
23 *and necessary costs of operation. ~~The department may not~~*
24 *increase any rent charged at a migrant farm labor center during*
25 *the 2003-04 fiscal year.*

26 (b) At the end of each fiscal year, any entity operating a
27 migrant farm labor center pursuant to this chapter may establish
28 a reserve account comprised of the excess funds provided
29 through the annual operating contract received from the
30 department, if the department certifies there is no need to address
31 reasonable general maintenance requirements or repairs,
32 rehabilitation, and replacement needs of the requesting migrant
33 farm labor center which affect the immediate health and safety of
34 residents. The cumulative balance of the reserve account shall
35 not exceed 10 percent of the annual operating funds annually
36 committed to the entity by the department. Funds in the reserve
37 account shall be used only for capital improvements such as
38 replacing or repairing structural elements, furniture, fixtures, or
39 equipment of the migrant farm labor center, the replacement or
40 repair of which are reasonably required to preserve the migrant

1 farm labor center. Withdrawals from the reserve account shall be
2 made only upon the written approval of the department of the
3 amount and nature of expenditures.

4 (c) A migrant farm labor center governed by this chapter may
5 be operated for an extended period prior to or beyond the
6 standard 180-day period after approval by the department,
7 provided that all of the following conditions are satisfied:

8 (1) No additional subsidies provided by the department are
9 used for the operation or administration of the migrant farm
10 center during the extended occupancy period except to the extent
11 that state funds are appropriated or authorized for the purpose of
12 funding all or part of the cost of subsidizing extended occupancy
13 periods during the first 14 days only.

14 (2) Rents are not to be increased above the rents charged
15 during the standard 180-day occupancy period unless the
16 department finds that an increase is necessary to cover the
17 difference between reasonable operating costs necessary to keep
18 the center open during the extended occupancy period and the
19 amount of state funds available pursuant to paragraph (1) and any
20 contributions from agricultural employers or other federal, local,
21 or private sources. These contributions shall not be used to
22 reduce the amount of state funds that otherwise would be made
23 available to the center to subsidize rents during an extended
24 occupancy period.

25 (3) In no event shall the rent during the extended occupancy
26 period exceed the average daily operating cost of the center, less
27 any subsidy funds available pursuant to paragraph (1) or (2).
28 With respect to an extended occupancy beyond the standard
29 180-day period, households representing at least 25 percent of
30 the units in the center shall have indicated their desire and
31 intention to remain in residency by signing a petition to the local
32 entity to keep the center open for an extended period at rents that
33 are the same or higher than rents during the regular period of
34 occupancy. Each household shall receive a clear bilingual notice
35 describing the extended occupancy options attached to the lease.

36 The Legislature finds and declares that because the number of
37 residents may be substantially reduced during the extended
38 occupancy period, a rent increase may be necessary to cover
39 operating costs. It is the intent of the Legislature that the public
40 sector, private sector, and farmworkers should each play an

1 important role in ensuring the financial viability of this important
2 source of needed housing.

3 (4) An extended occupancy period is requested by an entity
4 operating the migrant farm labor center and received by the
5 department no earlier than 30 days and no later than 15 days
6 prior to the center's scheduled opening or closing date. The
7 department shall notify the entity and petitioning residents of the
8 final decision no later than seven days prior to the center's
9 scheduled opening or closing date. During the extended
10 occupancy period, occupancy shall be limited to migrant
11 farmworkers and their families who resided or intended to reside
12 at a migrant center during the regular period of occupancy.

13 (5) Before approving or denying an early opening or an
14 extension and establishing the rents for the extended occupancy
15 period, both of which shall be within the sole discretion of the
16 department, the department shall take into consideration all of the
17 following factors:

18 (A) The structural and physical condition of the center,
19 including water and sewer pond capacity and the capacity and
20 willingness of the local entity to operate the center during the
21 extended occupancy period.

22 (B) Whether local approvals are required, and whether there
23 are competing demands for the use of the center's facilities.

24 (C) Whether there is adequate documentation that there is a
25 need for residents of the migrant center to continue work in the
26 area, as confirmed by the local entity.

27 (D) The climate during the extended occupancy period.

28 (E) The amount of subsidy funds available that can be
29 allocated to each center to subsidize rents below the operating
30 costs and the cost of operating each center during the extended
31 occupancy period.

32 (F) The extended occupancy period is deemed necessary for
33 the health and safety of the migrant farmworkers and their
34 families.

35 (G) Other relevant factors affecting the migrant farmworkers
36 and their families and the operation of the centers.

37 (6) The rents collected during the extended occupancy period
38 shall be remitted to the department. However, based on financial
39 records to the satisfaction of the department, the department may
40 reduce the amount to be remitted by an amount it determines the

1 local entity has expended during the extended occupancy period
2 that is not being reimbursed by department funds.

3 (7) The occupancy during the extended occupancy period
4 represents a new tenancy and is not subject to existing and
5 statutory and regulatory limitations governing rents. Prior to the
6 beginning of the extended occupancy period, residents shall be
7 provided at least two days' advance written notice of any rent
8 increase and of the expected length of the extended occupancy
9 period, including the scheduled date of the beginning of the
10 extended occupancy period and closure of the center. Prior to
11 being eligible for residency during the extended occupancy
12 period, residents shall sign rental documents deemed necessary
13 by the department.

14 (d) The Legislature finds and declares that variable annual
15 climates and changing agricultural techniques create an inability
16 to accurately predict the end of a harvest season for the purposes
17 of housing migrant farmworkers and their families. Because of
18 these factors, in any part of this state, and in any specific year,
19 one or more migrant farmworker housing centers governed by
20 this chapter need to open early or remain open for up to two
21 additional weeks to allow the residents to provide critical
22 assistance to growers in harvesting crops while also fulfilling
23 work expectations that encouraged them to migrate to the areas
24 of the centers. In addition, if the centers close prematurely or
25 open late, the migrant farmworkers often must remain or reside
26 in the areas to work for up to two weeks. During this time they
27 will not be able to obtain decent, safe, and affordable housing
28 and the health and safety of their families and the surrounding
29 community will be threatened.

30 The Legislature therefore finds and declares that, for the
31 purposes of any public or private right, obligation, or
32 authorization related to the use of property and improvements
33 thereon as a 180-day migrant center, an extended use of any
34 housing center governed by this chapter pursuant to this section
35 is deemed to be the same as the 180-day use generally authorized
36 by this chapter.

37 (e) Because of the presumed income levels of the occupants of
38 migrant farm labor centers, an entity operating a migrant farm
39 labor center shall be deemed eligible for the California
40 Alternative Rates for Energy program established pursuant to

- 1 Sections 382 and 739.1 of the Public Utilities Code. Any savings
- 2 from a reduction in energy rates shall be passed on to the
- 3 occupants of the migrant farm labor center.